

proceeding, or to avoid foreseeable future serious criminal misconduct by the accused. The seriousness of the offense charged and circumstances surrounding it are factors that may be used to determine whether the accused need be confined to ensure the accused's presence or whether future serious criminal misconduct is foreseeable.

b. Immediate steps will be taken to inform the individual confined of—

- (1) The specific offense of which the individual is accused.
- (2) The proposed action to be taken against the individual by foreign authorities.

c. Confinement under these provisions pending the final disposition of foreign criminal charges may be authorized by a GCM convening authority responsible for exercising U.S. custody over the soldier.

d. Minimum due process standards (to be included in procedures drawn to implement these provisions as set forth in para 17-4) will include review of foreign criminal charges by the local SJA to determine whether—

(1) Probable cause exists to believe that confinement is necessary to ensure the accused's presence at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused within the host country.

(2) Provision of a military legal advisor is necessary under the terms of AR 27-50, paragraph 1-6, to individuals placed in pretrial confinement under this chapter.

e. In addition, SOFA confinement will be reviewed as follows—

(1) A military magistrate or comparable legal officer (an officer other than the officer who ordered the soldier into confinement) will review the issue of whether probable cause exists to believe that confinement is necessary. The review will be made in light of the SOFA and other international agreements between the United States and the host country. Consistent with the provisions of applicable international agreements and the policy of seeking release of soldiers from foreign custody, the magistrate or comparable legal officer also may consider any pertinent factors including specific requests by the host country to confine or by the soldier to be confined in the U.S. rather than foreign custody. Unless otherwise provided for under SOFA obligations, the military magistrate or comparable legal officer will not inquire into the issue of whether probable cause exists to believe that the accused has committed the offenses charged under foreign law. The military magistrate or comparable legal officer may recommend release from confinement if the military magistrate determines that it is not necessary to ensure the accused's presence and that it is not foreseeable that the accused will engage in future serious criminal misconduct.

(2) The provisions of R.C.M. 305 do not apply to review of SOFA confinement (see para 17-4). If the military magistrate or comparable legal officer recommends that confinement is not necessary to ensure the accused's presence at trial or other foreign criminal proceeding and that it is not foreseeable that the accused will engage in future serious criminal misconduct within the host country, that recommendation will be communicated to the designated commanding officer (DCO). The DCO (see AR 27-50, app C) may, in the DCO's discretion, direct release from confinement or order such other disposition deemed appropriate. Coordination with host country authorities is also within the discretion of the DCO as specified in AR 27-50, paragraph 1-7. If the DCO was also the GCM authority who ordered the soldier into confinement and does not direct release based on the recommendation of the military magistrate or comparable legal officer, the DCO will forward the recommendation, together with comments, to the International and Operational Law Division (DAJA-IO), HQDA, The Judge Advocate General, 1777 North Kent Street, Rosslyn, VA 22209-2194. Under such circumstances, TJAG is delegated authority to direct release from U.S. confinement or order such other disposition deemed appropriate.

17-4. Implementation by major commands

Each Army overseas commander may, after prior approval by HQDA (DAJA-CL), supplement this chapter and require—

a. A publication for each country in which the Army overseas commander's subordinate commands or assigned units and activities are located.

b. Procedures for the implementation of Army policy regarding custodial rights and responsibilities by Army commands in that country.

Chapter 18

Victim/Witness Assistance

Section I

General Description

18-1. Purpose

This chapter implements P.L. 97-291 (Victim and Witness Protection Act of 1982), P.L. 98-473 (Victims of Crime Act of 1984), P.L. 101-647 (Victims' Rights and Restitution Act of 1990), P.L. 102-484 (National Defense Authorization Act for Fiscal Year 1993), P.L. 103-160 (National Defense Authorization Act for Fiscal Year 1994), and DOD

Directive (DODD) 1030.1. It also establishes policy, designates responsibility, and provides guidance for the assistance and treatment of those persons who are victims of crime and those persons who may be witnesses in criminal justice proceedings.

18-2. Policy

a. The military justice system is designed to ensure good order and discipline within the Army and also to protect the lives and property of members of the military community and the general public consistent with the fundamental rights of the accused. Without the cooperation of victims and witnesses, the system would cease to function effectively. Accordingly, all persons working within and in support of the system, that is, commanders, JAs, law enforcement and investigative agencies, corrections officials, and other personnel of Army multidisciplinary agencies must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will be kept to an absolute minimum.

b. In those cases in which a victim has been subjected to attempted or actual violence, every reasonable effort will be made to minimize further traumatization. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence or sexual misconduct.

c. Effective victim/witness programs are multidisciplinary and utilize all related military and civilian agencies. Victim/witness liaison (VWL) officers must be familiar with all such agencies and programs to ensure that necessary services are provided. Multidisciplinary participants include, but are not limited to, investigative and law enforcement personnel, chaplains, health care personnel, family advocacy/services personnel, JAs and other legal personnel, unit commanding officers and noncommissioned officers, and corrections/confinement facility personnel. In most instances, installations are expected to provide required services without referral to outside agencies. In death cases, the VWL officer will coordinate with the installation/community casualty working group (AR 600-8-1, chap 16) and the U.S. Army Criminal Investigation Command point of contact (Criminal Investigation Command points of contact are listed on the Internet at <http://www.cid.army.mil/contact/default.htm>).

d. A person's status as a victim or witness does not preclude and should not discourage a DA official's appropriate recognition of conduct of the victim or witness during or following the perpetration or attempted perpetration of a crime, that clearly demonstrates personal courage under dangerous circumstances. Examples of such conduct are saving of human life under hazardous conditions or extraordinary sacrifice that aids or supports military law, order, or discipline and that would otherwise merit official recognition (see ARs 672-20 and 600-8-22). Such recognition normally should be delayed until after local disposition of the incident.

e. The provisions of this chapter are intended to provide internal DA guidance for the protection and assistance of victims and witnesses and for the enhancement of their roles in the military criminal justice process, without infringing on the constitutional and statutory rights of the accused. These provisions are not intended to and do not create any entitlements, causes of actions, or defenses, substantive or procedural, enforceable at law by any victim, witness, or other person in any matter, civilian or criminal arising out of the failure to accord a victim or witness the services enumerated in this chapter. No limitations are hereby placed on the lawful prerogatives of DA or its officials.

18-3. Application

a. This chapter applies to those DA components engaged in the detection, investigation, or prosecution of crimes under the UCMJ or Federal statutes, and in the detention and incarceration of military accused. This chapter is intended to apply to all victims and witnesses in UCMJ or Federal court proceedings or investigations. While special attention will be paid to victims of serious, violent crime, all victims and witnesses of crime will receive the assistance and protection to which they are entitled.

b. Provisions of this chapter may also apply to victims or witnesses of crimes under the jurisdiction of State, other Federal, or foreign authorities during any portion of the criminal investigation or military justice proceedings conducted primarily by the Army or other DOD components.

18-4. Objectives

The objectives of the policies and procedures set forth in this chapter are—

a. To mitigate, within the means of available resources and under applicable law, the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by DA authorities.

b. To foster the full cooperation of victims and witnesses within the military criminal justice system.

c. To ensure that victims of crime and witnesses are advised of and accorded the rights described in this chapter, subject to available resources, operational commitments, and military exigencies.

18-5. Definitions

For purposes of this chapter, the following definitions apply:

a. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the

investigation is conducted primarily by the DOD components. Such individuals will include, but are not limited to, the following:

- (1) Military members and their family members.
 - (2) When stationed outside the continental United States, DOD civilian employees and contractors, and their family members. This applies to services not available to DOD civilian employees and contractors, and their family members, in stateside locations, such as medical care in military medical facilities.
 - (3) When a victim is under 18 years of age, incompetent, incapacitated or deceased, the term includes one of the following (in order of preference): a spouse; legal guardian; parent; child; sibling; another family member; or another person designated by a court or the Component responsible official, or designee.
 - (4) For a victim that is an institutional entity, an authorized representative of the entity. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.
- b. Witness.* A person who has information or evidence about a crime and provides that knowledge to a DOD component about an offense within the component's investigative jurisdiction. When the witness is a minor, this term includes a family member or legal guardian. The term "witness" does not include a defense witness or any individual involved in the crime as a perpetrator or accomplice.

Section II

Victim/Witness Assistance Program

18-6. General

- a.* The Victim/Witness Assistance Program is designed to accomplish the objectives set forth in paragraph 18-4, through—
- (1) Encouraging the development and strengthening of victim/witness services.
 - (2) Consolidating information pertaining to victim/witness services.
 - (3) Coordinating multidisciplinary victim/witness services by and through victim/witness liaisons.
- b.* TJAG is the component responsible official in the DA for victim/witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.
- c.* SJAs are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will—
- (1) Establish and provide overall supervision for the Victim/Witness Assistance Program within their GCM jurisdictions.
 - (2) Ensure coordination, as required, with other GCM jurisdictions, or State or Federal victim and witness assistance programs.
 - (3) Establish a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation to ensure interdisciplinary cooperation among victim and witness service providers. Existing installation councils, such as The Family Advocacy Case Management Team, may be utilized as appropriate.
 - (4) Ensure development of appropriate local management controls to ensure compliance with this chapter.
- d.* Department of the Army and installation inspector generals will provide additional oversight and review of the management of the victim/witness assistance program during staff assistance visits and inspections.

18-7. Victim/witness liaison

- a. Designation and role.* SJAs will designate, in writing, one or more VWLs to administer the Victim/Witness Assistance Program for their jurisdictions. The role of the VWL is one of facilitator and coordinator. The VWL will act as the primary point of contact through which victims and witnesses may obtain information and assistance in securing available victim/witness services. Generally, it will not be the responsibility of the VWL to personally provide specific victim/witness services unless the VWL is qualified to provide the service in question and no other organization or service agency exists with primary responsibility for rendering that service.
- b. Criteria.* The designated VWL should, when practicable, be a commissioned or warrant officer, or civilian in the grade of GS-11 or above. When necessary, an enlisted person in the grade of E-6 or above, or civilian, GS-6 or above may be designated as a VWL if a commissioned or warrant officer is not reasonably available. A VWL should be generally familiar with the military justice system and have the ability to maintain courteous and effective relations with the military community, service organizations, and the general public. When for geographic or operational reasons, it is necessary to designate more than one VWL within a GCM jurisdiction, the SJA will ensure that the responsibilities for cases or areas of each VWL are clearly defined. VWL responsibilities should be outside the military justice section to the extent permitted by resources. To be most effective, VWLs must be perceived as impartial actors in the prosecution process. To the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. Attorneys assigned as VWLs must ensure that victims and witnesses understand the attorney's role as a VWL. The attorney must clearly explain that no attorney-client relationship is formed as the result of VWL services provided by the attorney.

18-8. Identification of victims and witnesses

At the earliest opportunity after the detection of a crime and where it may be done without interfering with an investigation, the law enforcement official or commander responsible for the investigation or other individual with victim/witness assistance responsibilities under this chapter will—

- a. Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 18-5.
- b. Inform the victims and witnesses of their right to receive the services described in this regulation, and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the UCMJ or other statutory authority, or intended disposition of the offense. In cases where the victim is no longer located at the military installation where the alleged crime occurred, the victim should be referred to the nearest VWL, who may not necessarily be the VWL where the alleged crime occurred. To determine where the nearest VWL is located, consult appendix E, military justice area support responsibilities, or consult the Office of the Judge Advocate General (OTJAG), DAJA-CL.
- c. Report victim and witness notification in accordance with DOD Instruction (DODI) 1030.2 and this regulation.
- d. Victims identified as a result of investigations of potential UCMJ violations conducted in accordance with AR 15-6 must receive assistance under the guidelines set forth in this chapter.

18-9. Initiation of liaison service

- a. SJAs or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that victims and witnesses of crime are provided the name, location, and telephone number of a VWL. Procedures should be established to ensure timely notification; however, notification by law enforcement and criminal investigative personnel should not interfere with ongoing investigations. SJAs are encouraged to establish Memoranda of Agreement to ensure a cooperative relationship with local civilian agencies to identify, report, investigate, and provide services and treatment to victims.
- b. At the earliest opportunity but no later than appointment of an Article 32 investigative officer or referral of charges to court-martial, the VWL, trial counsel, or other Government representative will ensure that victims are informed of the services described in this chapter (sections III and V) and are provided a Victim/Witness Information Packet. They also will ensure that witnesses are informed of the services described in this chapter (sections IV and V) and provided a Victim/Witness Information Packet. DD Form 2701 will be used for this purpose, if available. The Victim/Witness Checklist (app D) should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

18-10. Rights of crime victims

- a. As provided for in 42 U.S.C. 10601 et seq, and DODI 1030.2, a crime victim has the following rights:
 - (1) The right to be treated with fairness, dignity, and a respect for privacy.
 - (2) The right to be reasonably protected from the accused offender.
 - (3) The right to be notified of court proceedings.
 - (4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.
 - (5) The right to confer with the attorney for the Government in the case.
 - (6) The right to restitution, if appropriate.
 - (7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.
- b. SJAs will ensure establishment of local policies and procedures to accord crime victims the rights described above.

18-11. Training and publicity

- a. SJAs will ensure annual victim/witness assistance program training is provided to representatives of all agencies performing victim/witness assistance functions (JAs and legal, investigative and law enforcement personnel; chaplains; health care personnel; family advocacy/services personnel; unit commanding officers and noncommissioned officers; and corrections/confinement facility personnel) within their GCM jurisdictions. Training will cover at a minimum, victims' rights; available compensation through Federal, State, and local agencies; providers' responsibilities under the victim/witness assistance program; and requirements and procedures established by this chapter.
- b. SJAs also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. SJAs will ensure that the DOD Victim and Witness Bill of Rights is displayed in the offices of commanders and Army multidisciplinary agencies that provide victim/witness assistance and that victim/witness brochures and pamphlets are available at appropriate locations throughout their jurisdictions. Installation public affairs resources should be used to obtain maximum publicity within

the military community. Use of commander policy letters endorsing the victim/witness assistance program is encouraged.

Section III

Victim Services

18–12. Medical, financial, legal, and social services

a. Investigative or law enforcement personnel, the VWL, trial counsel, or other individuals with victim/witness assistance responsibilities under this chapter will inform the victim of a crime of the place where the victim may receive emergency medical care and social service support. When necessary, these personnel will provide appropriate assistance in securing such care. Victims suffering from or indicating injury or trauma will be referred to the nearest available medical facility for emergency treatment. When required for completion of criminal investigations, examination and treatment of civilian victims of assaults committed on Army installations may be provided without charge at the discretion of Medical Treatment Facility (MTF) commanders (AR 40–3, para 4–67). MTF commanders will construe liberally their authority to waive charges unless inappropriate in view of the unique circumstances. Abused dependents of soldiers who receive a dishonorable or bad conduct discharge or a dismissal for an offense involving abuse of the dependent may receive medical and dental care in uniformed services facilities for injuries resulting from that abuse (10 U.S.C. 1076(e)).

b. The VWL or other Government representative will assist victims of crime in obtaining appropriate financial, legal, and other social service support by informing them of public and private programs that are available to provide counseling, treatment, and other support to the victim, including available compensation through Federal, State, and local agencies. The VWL also will maintain, use, and update the DOJ Federal Resource Guide on Victim and Witness Assistance to advise and assist victims. The VWL will assist the victim in contacting agencies or individuals responsible for providing necessary services and relief. Examples of assistance and services that may be available to victims, in addition to those available through MTFs, include the following:

- (1) Army Community Services Program (AR 608–1).
 - (2) Army Emergency Relief (AR 930–4).
 - (3) Legal Assistance (AR 27–3).
 - (4) The American Red Cross (AR 930–5).
 - (5) Chaplain Services (AR 165–1).
 - (6) Civilian community-based victim treatment, assistance, and compensation programs.
 - (7) For dependents of soldiers who are victims of abuse by the military spouse or parent, payment of a portion of the disposable retired pay of the soldier under 10 U.S.C. 1408 or payment of transitional compensation benefits under 10 U.S.C. 1059.
 - (8) For families of soldiers, transportation and shipment of household goods may be available even if the soldier receives a punitive or other than honorable discharge (see Joint Travel Regulations for specifics).
- c.* Judge advocates will serve on the Sexual Assault Review Board (SARB), which establishes the medical procedures and responsibilities for medical management of sexual assault victims. See also the U.S. Army Medical Command for information and AR 608–18.
- d.* When victims are not eligible for military services or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available nonmilitary services within the civilian community.

18–13. Stages and role in military criminal justice process

Victims should be advised of stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case. This information will be set forth in a Victim Information Packet (DD Form 2701 and DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime)) and should be further amplified, as required, by the VWL or trial counsel (for example, some offenses may be tried in U.S. Magistrate or U.S. District Court).

18–14. Notification and description of services provided victims of crime

a. During the investigation and prosecution of a crime, the VWL, trial counsel, or other Government representative will provide a victim the earliest possible notice of significant events in the case, to include—

- (1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.
- (2) The apprehension of the suspected offender.
- (3) The decision whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender.
- (4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an Article 32, UCMJ, investigation.
- (5) The scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes.

- (6) The detention or release from detention of an offender or suspected offender.
 - (7) The acceptance of a plea of guilty or the rendering of a verdict after trial.
 - (8) The opportunity to consult with trial counsel about providing evidence in aggravation of financial, social, psychological, and physical harm done to or loss suffered by the victim.
 - (9) The result of trial.
 - (10) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.
 - (11) General information regarding the corrections process, including information about work release, furlough, probation, parole and other forms of release from custody, and the offender's eligibility for each.
 - (12) The right to request, through the VWL, trial counsel or designee to the commander of the corrections facility to which the offender is assigned, notice of the matters set forth in paragraph *b*, below.
 - (13) How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations. (See AR 15–130, chap 3.)
- b.* Upon a sentence to confinement, the trial counsel or a representative for the Government will—
- (1) Formally inform the victim regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes and when the offender will be considered for parole or clemency by providing the victim DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime).
 - (2) Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status) in every case, regardless of election. One copy of DD Form 2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army's central repository, the U.S. Army Military Police Operations Agency, as follows, Deputy Chief of Staff, G–3 (ATTN: DAMO–ODL), 400 Army Pentagon, Washington DC 20310–0400.
 - (3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

18–15. Consultation with victims

- a.* When appropriate, trial counsel, VWL, or other Government representative will consult with victims of crime concerning—
- (1) Decisions not to prefer charges.
 - (2) Decisions concerning pretrial restraint of the alleged offender or his or her release.
 - (3) Pretrial dismissal of charges.
 - (4) Negotiations of pretrial agreements and their potential terms.
- b.* Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing in this regulation limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and to prevent service-discrediting conduct.

18–16. Property return and restitution

- a.* In coordination with criminal investigative agents, SJAs will ensure that all noncontraband property that has been seized or acquired as evidence for use in the prosecution of an offense is safeguarded and returned to the appropriate person, organization, or entity as expeditiously as possible per paragraph 9–11. The VWL or other Government representative will ensure that victims are informed of applicable procedures for requesting return of their property. SOFAs or other international agreements may apply overseas. SJAs should review provisions of applicable agreements.
- b.* Victims who suffer personal injury or property loss or damage as a result of an offense should be informed of the various means available to seek restitution. Article 139, UCMJ, may provide some relief if the property loss or damage is the result of a wrongful taking or willful damage by a member of the armed forces (care must be taken to ensure that Article 139 investigations are conducted in a manner that does not interfere with any ongoing criminal investigations or courts-martial proceedings). Victims should also be informed of the possibility of pursuing other remedies, as claims, private lawsuits, or any crime victim compensation available from Federal (for example, Transitional Compensation Program for abused family members under 10 U.S.C. 1059) or civilian sources, and of appropriate and authorized points of contact to assist them; for example, local claims office, legal assistance or lawyer referral services, and State victim assistance or compensation programs.
- c.* Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107. The Army Clemency and Parole Board also will consider the appropriateness of restitution in clemency and parole actions.

Section IV

Witness Services

18–17. Notification and description of services provided witnesses

a. Trial counsel, VWL, or other Government representative will make reasonable efforts to notify witnesses and representatives of witnesses who are minors (to include legal guardians, foster parents, or other persons in lawful custody of minors or incompetent individuals), when applicable and at the earliest opportunity, of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral (or the filing in a civilian court) or dismissal of charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an Article 32, UCMJ, investigation.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial.

(9) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(10) General information regarding the corrections process, including information about work release, furlough, probation, the offender's eligibility for each, and the witnesses' right to be informed of changes in custody status.

b. Witnesses should be advised of the stages in the military criminal justice system, the role that they can be expected to play in the process, and how to obtain additional information concerning the process and the case. This information will be set forth in a Victim and Witness Information Packet (DD Forms 2701, 2702, and 2703) and should be further amplified, as required, by the trial counsel, VWL, or designee.

c. Upon a sentence to confinement, the trial counsel or other representative for the Government will—

(1) Formally inform those witnesses adversely affected by the offender regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes and when the offender will be considered for parole or clemency by providing DD Form 2703. Appropriate cases include, but are not limited to, cases where the life, well-being, or safety of the witness has been, is, or in the future reasonably may be, jeopardized by participation in the criminal investigative or prosecution process.

(2) Ensure the witness' election regarding notification is recorded on DD Form 2704 in every case, regardless of election. One copy of DD Form 2704 will be given to the witness. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army's central repository, Deputy Chief of Staff, G–3, U.S. Army Military Police Operations Agency (ATTN: DAMO–ODL), 400 Army Pentagon, Washington, DC 20310–0400.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

18–18. Limitations

The trial counsel, VWL, or other Government representative will determine, on a case-by case basis, the extent to which witnesses are provided the services set forth in sections IV and V of this chapter. For example, it may be unnecessary to provide some or all of these services to active duty military witnesses or to expert or character witnesses. Trial counsel or designee will apprise a witness' chain of command of the necessity for the witness' testimony (and the inevitable interference with and absence from duty). Ordinarily, however, doubt whether to provide the foregoing information or services should be resolved in favor of providing them, especially when services have been requested by the witness.

Section V

Victim and Witness Services

18–19. Protection of victims and witnesses

a. *Victim/Witness intimidation.* The SJA will ensure that victims and witnesses are advised that their interests are protected by administrative and criminal sanctions. In the criminal context for example, 18 USC sections 1512 and 1513 make tampering with or retaliation against a victim or witness punishable under Federal law; intimidation and threats to victims or witnesses are punishable under Article 134, UCMJ. Obstruction or attempted obstruction of justice and subornation of perjury are also offenses under the UCMJ. Victims and witnesses should be further advised that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities (for example, commander, SJA, CID, PM, trial counsel or VWL), that their complaints will be promptly investigated, and

that appropriate action will be taken. In the administrative context, the commander may provide victim protection by issuing a written order to the suspect not to contact the victim except when supervised by a member of the chain of command, or by revoking the suspect's pass privileges. Commanders should consult with their servicing judge advocates before taking administrative measures to protect a victim.

b. Victim/witness protection. In cases where the life, well-being, or safety of a victim or witness is jeopardized by his or her participation in the criminal investigation or prosecution process, the SJA will ensure that appropriate law enforcement agencies are immediately notified. Commanders, in conjunction with the law enforcement agency concerned, will promptly take, in appropriate circumstances, those measures necessary to provide reasonable protection for the victim or witness. These measures may include temporary attachment or assignment, or permanent reassignment, of military personnel, or in some cases the provision of State, other Federal, or foreign protective assistance. The trial counsel, VWL, or other Government representative will immediately notify the SJA whenever a victim or witness expresses genuine concern for his or her safety. The SJA should contact USACIDC for all victim and witness requests to be in the Federal Witness Protection program, and for Fear of Life transfers.

c. Separate waiting area. At courts-martial and investigative proceedings, victims and Government witnesses should, to the greatest extent possible, be afforded the opportunity to wait in an area separate from the accused or defense witnesses to avoid embarrassment, coercion, or similar emotional distress. In a deployed environment, victims and Government witnesses should be afforded a separate waiting area to the greatest extent practicable.

d. Arranging witness interviews. Within the guidelines of R.C.M. 701(e) and at the request of the victim or other witness, a VWL or designee may act as an intermediary between a witness and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial. The VWL's role in arranging witness interviews is to ensure that witnesses are treated with courtesy and respect and that interference with their lives and privacy is kept to a minimum. This paragraph is not intended to prevent the defense or the Government from contacting potential witnesses not previously identified or who have not requested a VWL to act as an intermediary.

18-20. Notification to employers and creditors

On request of a victim or witness, trial counsel, VWL, or other Government representative will inform an employer that the victim's or witness's innocent involvement in a crime or in the subsequent prosecution may cause or require their absence from work. In addition, if a victim or witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, suffers serious financial hardship, a Government representative will assist the victim or witness in explaining to creditors the reason for such hardship, as well as ensuring that legal assistance is available to soldiers, retirees, and their family members for this purpose.

18-21. Witness fees and costs

Witnesses requested or ordered to appear at Article 32, UCMJ, investigations or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ; R.C.M. 405(g); and chapter 5 of this regulation. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witnesses fees and related costs. In this regard, coordination should be made with local finance officers for establishing procedures for payment after normal duty hours if necessary.

18-22. Civilian witness travel to proceedings overseas

a. When a civilian witness, other than a DOD employee, is located in the CONUS and is to testify in courts-martial or other legal proceedings overseas, a representative of the convening authority may request that the Clerk of Court, U.S. Army Judiciary, issue invitational travel orders and arrange for transportation. The witness request should be faxed as follows: Overseas Witness Liaison, Office of the Clerk of Court, U.S. Army Judiciary, (703) 696-8777; DSN 426-8777.

b. Requests should be timely submitted to ensure receipt by the Clerk of Court at least 10 days before the desired arrival date, particularly if passports must be obtained for the witness. Otherwise, the request must be accompanied by a brief explanation of the delay. Each request will include the following information numbered according to the subparagraphs below:

- (1) Name of witness (and age if a minor).
- (2) Name of the case or other proceedings (include grade and complete name of the accused).
- (3) Type of court, investigation, or board, including general nature of the charges.
- (4) Date proceedings are to begin.
- (5) Desired arrival date of witness, destination/city, and estimated duration of stay.
- (6) Address of witness, including name of occupant if different from that of witness.
- (7) Witness' day and evening telephone numbers, if known.
- (8) Whether witness already has been contacted concerning attendance, by whom, and with what result.
- (9) Whether witness is known to possess a current U.S. passport.

(10) Relationship of witness to the proceedings (for example, victim, prosecution witness other than victim, relative of the accused, defense witness not related to the accused).

(11) If the witness is minor or disabled, the information required by (6) through (9) above as to the witness' parent, guardian, or other escort.

(12) Name, title, and telephone number of counsel requesting the witness and name, location, and telephone number of the victim/ witness liaison.

(13) Fund citation to be used in invitational travel orders and any limitation as to the amount available. (Early citation of funds is essential to issue of invitational travel orders so that prepaid tickets can be placed at the departure air terminal.)

(14) Lodging information should include the name, address, and telephone number of the facility where the command has made reservations for the witness.

c. When the office of the Clerk of Court is arranging a witness' travel, any proposed change by local authorities in the travel arrangements or itinerary must be coordinated first with that office.

d. If the requirement is cancelled after the witness has been contacted and agreed to proceed overseas, an explanation to be given the witness will be provided to the Clerk of Court.

18-23. Local services

The trial counsel, VWL, or designee will ensure that victims and witnesses are informed of, and provided appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators/ interpreters.

18-24. Transitional compensation

The Transitional Compensation Program provides financial support, dependent upon the soldier's ETS, for family members of soldiers who are discharged or sentenced to total forfeitures by court-martial or administrative separation proceedings for charges that include dependent abuse offenses. VWLs and all judge advocates will be familiar with transitional compensation procedures and benefits for victims as described in AR 608-1, DOD Instruction 1342.24 and 10 USC 1059. VWLs and judge advocates will inform victims of their potential eligibility for this program and refer them to Army Community Services when appropriate. Judge advocates will advise transitional compensation approving officials on the standards for certifying transitional compensation applications (block 22 of DD Form 2698 (Application for Transitional Compensation)). Judge advocates will not conduct an independent legal review of the underlying basis for the transitional compensation.

18-25. Requests for investigative reports or other documents

The SJA will ensure that victim's and witness' requests for investigative reports or other documents are processed under applicable Freedom of Information Act or Privacy Act procedures. In appropriate cases, the SJA may authorize release of a record of trial to a victim when necessary to ameliorate the physical, psychological, or financial hardships suffered as a result of the criminal act.

Section VI

Confinement Facilities and Central Repository

18-26. Confinement facilities

a. On entry of an offender into confinement, the commander of the confinement facility to which the offender is assigned will ensure receipt of DD Form 2704 and determine whether the victim and/or witness requested notification of changes in confinement status in the offender's case. If the DD Form 2704 is not available, the commander will make inquiry of the trial counsel or central repository to obtain the form.

b. If the victim and/or witness requested notification on DD Form 2704, the commander of the confinement facility will—

(1) Advise the victim and/or witness of the offender's place of confinement and the offender's projected minimum release date.

(2) Provide the victim and/or witness with the earliest possible notice of the following:

(a) The escape, work release, furlough, emergency or special temporary home parole, or any other form of release from custody of the offender;

(b) The transfer of the offender from one facility to another; this includes temporary custody by State or Federal officials for the purpose of answering additional criminal charges.

(c) The scheduling of a clemency or parole hearing for the offender;

(d) The release of the offender from supervised parole;

(e) The death of the offender, if the offender dies while in confinement.

(3) In cases involving escape of a confinee, emergency leave or temporary home release, confinement facilities will make immediate efforts to notify victims and witnesses. The following will constitute reasonable effort:

- (a) Attempted telephonic notification;
 - (b) Faxed notification, if possible;
 - (c) Written notification by overnight mail.
- c. Methods used and attempts made will be recorded (including date, time and person notified). DD Form 2705 (Victim/Witness Notification of Inmate Status) may be used for this purpose.
- d. On transfer of the offender, the commander of the confinement facility will notify the gaining confinement facility of the victim's and/or witness' request by forwarding the completed DD Form 2704 with an information copy to the central repository.
- e. Annually, no later than 31 January, the commander of the confinement facility will report to the DA central repository the number of victims and witnesses who were notified of changes in confinement status during the reporting period, and the total number of confinees on whom notification is required.

18–27. Reporting requirements and responsibilities

a. Headquarters, Department of the Army, Deputy of Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (DAMO–ODL) is the Army central repository for tracking notice of the status of offenders confined in Army confinement facilities and for tracking the following information:

- (1) Number of victims and witnesses who received a DD Form 2701 or DD Form 2702 from law enforcement or criminal investigative personnel;
- (2) The number of victims and witnesses who were informed (as recorded on DD Form 2704 or otherwise) of their right to be notified of changes in confinee status;
- (3) The number of victims and witnesses who were notified by confinement Victim and Witness Assistance officials using DD Form 2705 of changes in confinee status;
- (4) The number of confinees, by Service, in Army confinement facilities as of 31 December of each year, about whom victim/ witness notifications must be made.

b. Annually, no later than 15 January of each year, the central repository will report to Criminal Law Division (DAJA–CL), HQDA, The Judge Advocate General, 1777 N. Kent Street, Rosslyn, VA 22209, cumulative figures for the previous calendar year on the notification and reporting requirements in paragraph a, above. DD Form 2706 (Annual Report on Victim and Witness Assistance) will be used for this purpose.

c. Annually, not later than 15 January of each year, the SJA of each command having GCM jurisdiction will report, through MACOM channels, to the Criminal Law Division (DAJA–CL), HQDA, The Judge Advocate General, 1777 N. Kent Street, 10th floor, Rosslyn, VA 22209, cumulative information on the following:

- (1) The number of victims and witnesses who received a DD Form 2701 or 2702 from trial counsel, VWL or designee;
 - (2) The number of victims and witnesses who received a DD Form 2703 from trial counsel, VWL or designee.
- d. SJAs will obtain data for their reports from subordinate commands attached or assigned to their GCM jurisdiction for military justice purposes, including supported RC units. Negative reports are required. DD Form 2706 will be used for this purpose.

e. Criminal Law Division, OTJAG, will prepare a consolidated report on DD Form 2706 for submission to the Department of Defense (Under Secretary for Personnel and Readiness, Legal Policy Office).

18–28. Evaluation of Victim/Witness Liaison Program services

a. SJAs will ensure that each victim and witness in an incident that is prosecuted at a GCM or SPCM or investigated pursuant to UCMJ, Art. 32 in those cases not disposed of by GCM or SPCM receive a victim/witness evaluation form. These forms may also be provided to other victims and witnesses.

b. SJAs will use DA Form 7568 (Army Victim/Witness Liaison Program Evaluation).

c. Evaluation forms will be reviewed locally by the SJA and forwarded quarterly by facsimile or e-mail to OTJAG, Criminal Law Division, ATTN: Victim/Witness Coordinator, 1777 N. Kent Street, Rosslyn, VA 22209.

d. The evaluation form may be provided to victims and witnesses by hand, by mail, or otherwise but must be returned in an anonymous manner—for example, in a drop box away from the military justice section or by a preaddressed envelope or other anonymous means of return. The recipients of the evaluation forms must be advised that the forms will be returned in an anonymous manner and cannot be accepted in any other way. The survey will be accompanied by a cover letter signed by the SJA. This letter will thank the victim/witness for assisting in the prosecution and emphasize the need for and the anonymous nature of any response.